

KAMALA D. HARRIS
Attorney General of California
Sarah E. Morrison
Supervising Deputy Attorney General
JAMES R. POTTER, State Bar No. 166992
MEGAN K HEY, State Bar No. No. 232345
Deputy Attorneys General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2637
Fax: (213) 897-2802
E-mail: James.Potter@doj.ca.gov

*Attorneys for Plaintiffs Department of Toxic
Substances Control and Toxic Substances Control
Account*

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

**CALIFORNIA DEPARTMENT OF
TOXIC SUBSTANCES CONTROL
and CALIFORNIA TOXIC
SUBSTANCES CONTROL
ACCOUNT.**

Plaintiffs,

V.

J&S CHROME PLATING CO., a California corporation, KENFIELD DEV., LLC, a California limited liability company; and JAMES MANCUSO, an individual,

Defendants.

Case No.: 2:14-CV02613 RGK
(AJWx)

[PROPOSED] CONSENT DECREE
BETWEEN PLAINTIFFS AND
DEFENDANT J&S CHROME
PLATING CO.; EXHIBITS

Judge: Hon. R. Gary Klausner
Dept.: 850
Trial Date: August 25, 2015
Action Filed: April 7, 2014

I. INTRODUCTION

1. Plaintiff the State of California Department of Toxic Substances Control (“DTSC”) and the Toxic Substances Control Account (collectively “Plaintiffs”) filed a complaint in this matter pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq.

1 [PROPOSED] CONSENT DECREE BETWEEN PLAINTIFFS
AND J&S CHROME

1 and the California Hazardous Substances Account Act (“HSAA”), California
2 Health and Safety Code § 25300 et seq. against Defendants J&S Chrome Plating
3 Co. (“Settling Defendant”), Kenfield Dev., LLC, and James Mancuso
4 (“Complaint”). In the Complaint, Plaintiffs seek to recover costs they incurred
5 responding to releases and/or threatened releases of hazardous substances at or from
6 the property located at 6863 East Florence Place, Bell Gardens, California, 90201,
7 in the County of Los Angeles, California (“the Site.”). CERCLA section 107(a), 42
8 U.S.C. § 9607(a). Additionally, Plaintiffs seek declaratory relief under CERCLA
9 section 113(g)(2), 42 U.S.C. § 9613(g)(2) that Defendants are jointly and severally
10 liable for future response costs to be incurred by Plaintiffs to address releases
11 and/or threatened releases of hazardous substances at or from the Site.

12 2. In the Complaint, Plaintiffs allege, in relevant part, the following:

13 a. The Site is located in the City of Bell Gardens across the street
14 from residential dwellings and within 500 feet of a public school. The Los
15 Angeles Regional Water Quality Control Board has designated drinking
16 water as a beneficial use for some groundwater in the vicinity of the Site, and
17 there is an inoperative drinking water well within 1000 feet of the Site.

18 b. From approximately 1953 to 1991, Settling Defendant operated
19 a metal plating facility at the Site. In the plating operations at the Site, J&S
20 Chrome used chromium, cadmium, and zinc.

21 c. Settling Defendant has owned the Site from approximately
22 1999 to the present.

23 d. In February 1999, in response to a request by Settling
24 Defendant, and in accordance with Health and Safety Code section 25262,
25 Cal/EPA designated DTSC as the administering agency for all investigation
26 and remediation activities at the Site.

27 e. On December 18, 2002, DTSC issued an Imminent and
28 Substantial Endangerment Determination and Remedial Action Order (“2002

1 Order”), which included findings that hazardous substances had been
2 released and were present in the groundwater and/or soil at the Site in
3 sufficient concentrations to pose a substantial danger to public health and the
4 environment, and directing Settling Defendant to develop and implement a
5 complete site remediation strategy for the Site.

6 f. Settling Defendant performed some site assessment and
7 remediation of the Site but did not complete all of the actions required in the
8 2002 Order.

9 g. DTSC completed a remedial investigation and feasibility study
10 for the Site. The remedial investigation, approved in 2003, identified total
11 chromium and hexavalent chromium as the primary chemicals of concern on
12 the Site. The feasibility study, completed in 2005, identified remedial action
13 alternatives that could meet risk-based remedial goals, applicable or relevant
14 and appropriate requirements, and remedial action objectives for the Site.

15 h. In or about February 2008, DTSC divided the Site into two
16 Operable Units. Operable Unit 1 (“OU1”) encompasses the soil
17 contamination, and Operable Unit 2 (“OU2”) relates to the groundwater
18 contamination.

19 i. In April 2008, DTSC began implementation of the Remedial
20 Action Plan for OU1. DTSC’s actions included removing soil contaminated
21 with hazardous substances and installing mechanisms to stabilize the
22 remaining hazardous substances.

23 j. In February 2010, DTSC began implementation of OU2
24 remediation as set forth in the 2009 Remedial Action Plan for OU2. DTSC’s
25 actions included installing groundwater extraction wells and groundwater
26 treatment facilities.

27 k. The remedies for both OU1 and OU2 require ongoing
28 operation and maintenance.

1 3. Plaintiffs' response actions were necessary to remove and remedy the
2 hazardous substances released and/or threatened to be released at and from the Site.
3 DTSC's response actions include, but are not limited to, the following activities:
4 investigation; removal/remediation actions; enforcement/cost recovery; oversight;
5 public participation; and compliance with the California Environmental Quality
6 Act. DTSC's response actions were not inconsistent with the National Contingency
7 Plan, 40 C.F.R. Part 300.

8 4. As of June 2015, Plaintiffs' unreimbursed Response Costs related to the
9 Site exceeded \$8 million. Plaintiffs will continue to incur Response Costs related
10 to the Site.

11 5. Settling Defendant filed an answer to the Complaint on October 31,
12 2014.

13 6. On April 20, 2015, the Court issued an Order Pursuant to Stipulation
14 Granting, in Part, Plaintiffs' Motion for Partial Summary Judgment On the Liability
15 of J&S Chrome Plating and James Mancuso, ECF No. 48, that established that
16 "[Settling Defendant] is liable for all response costs incurred by DTSC in
17 responding to the release or threatened release of hazardous substances at the Site,"
18 but preserved [Settling Defendant's] right to assert certain affirmative defenses at
19 trial. The Order also establishes that [Settling Defendant] was an operator of the
20 Site at the time of disposal of hazardous substances at the Site. A copy of that Order
21 is attached hereto as Exhibit A.

22 7. Plaintiffs and Settling Defendant ("the Parties") agree, and this Court, by
23 entering this Consent Decree, finds, that this Consent Decree has been negotiated
24 by the Parties in good faith, settlement of this matter will avoid expensive,
25 prolonged and complicated litigation between the Parties, and this Consent Decree
26 is fair, reasonable, in the public interest and consistent with the purpose of
27 CERCLA.

28 **THEREFORE**, the Court, with the consent of the Parties to this

1 Consent Decree, hereby **ORDERS, ADJUDGES, AND DECREES**, as follows:

2 **II. JURISDICTION**

3 8. The Court has subject matter jurisdiction over the matters alleged in this
4 action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367(a) and CERCLA, section
5 113(b), 42 U.S.C. § 9613(b), and personal jurisdiction over each of the Parties.
6 Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b) and CERCLA
7 section 113(b), 42 U.S.C. § 9613(b). Solely for the purposes of this Consent
8 Decree and the underlying Complaint, Settling Defendant waives all objections and
9 defenses that Settling Defendant may have to the jurisdiction of the Court or to
10 venue in this district. Settling Defendant shall not challenge the terms of this
11 Consent Decree or this Court's jurisdiction to enter and enforce this Consent
12 Decree.

13 9. The Court shall retain jurisdiction over this matter for the purpose of
14 interpreting and enforcing the terms of this Consent Decree if necessary.

15 **III. SETTLEMENT OF DISPUTED CLAIMS**

16 10. This Consent Decree resolves Plaintiffs' claims against Settling
17 Defendant in the above-captioned action. Plaintiffs agree to resolve Settling
18 Defendant's liability in this action in exchange for consideration from Settling
19 Defendant, including payment by Settling Defendant to reimburse a portion of
20 Plaintiffs' Response Costs incurred and to be incurred at or in connection with
21 releases and/or threatened releases of hazardous substances at and/or from the Site.

22 11. Nothing in this Consent Decree shall be construed as an admission by
23 Settling Defendant of any issue of law or fact or of any violation of law, beyond
24 those issues of fact and law established in the Partial Summary Judgment Order,
25 ECF No. 48. Except as otherwise provided by this Consent Decree, this Consent
26 Decree shall not prejudice, waive or impair any right, remedy or defense that
27 Settling Defendant may have in any other or further legal proceeding.

1 12. Settling Defendant consents to, and shall not challenge entry of this
2 Consent Decree or this Court's jurisdiction to enter and enforce this Consent
3 Decree.

4 13. Upon approval and entry of this Consent Decree by the Court, this
5 Consent Decree shall constitute a final judgment between and among the Parties.

6 **IV. DEFINITIONS**

7 14. Unless otherwise expressly provided herein, terms used in this Consent
8 Decree that are defined in CERCLA, in the HSAA or in regulations promulgated
9 under CERCLA shall have the meaning assigned to them therein. Whenever terms
10 listed below are used in this Consent Decree, the definitions below shall apply.

11 15. "Day" shall mean shall mean a calendar day . In computing any period of
12 time under this CD, where the last day would fall on a Saturday, Sunday, or federal
13 or State holiday, the period shall run until the close of business of the next Day.

14 16. . "DTSC" shall mean the State of California Department of Toxic
15 Substances Control, and its predecessors and successors. DTSC is a public agency
16 of the State of California organized and existing under and pursuant to California
17 Health and Safety Code § 58000 et seq. Under California law, DTSC is the state
18 agency responsible for determining whether there has been a release and/or
19 threatened release of hazardous substances into the environment, and for
20 determining the actions to be taken in response thereto.

21 17. "Effective Date" shall mean the date the Court enters an Order
22 approving this Consent Decree.

23 18. "Fair Market Value" shall have the meaning specified in California Code
24 of Civil Procedure section 1263.320.

25 19. "Net Sale Proceeds" shall mean the gross sale price, less brokerage
26 commissions, closing costs, and marketing expenses.

27 20. "Parties" shall mean Plaintiffs and Settling Defendant..

28 21. "Plaintiffs" shall mean DTSC and the Toxic Substances Control Account.

1 22. "Property" shall mean the real property, identified in the Los Angeles
2 County Map Book 5604, Page 248, Tract, No. 11763, which is located at 6863 East
3 Florence Place, in Bell Gardens California.

4 23. "Response Costs" shall mean all costs of "removal," "remedial action,"
5 or "response" as those terms are defined by CERCLA § 101, 42 U.S.C. § 9601,
6 related to the release and/or threatened release of hazardous substances at or from
7 the Site, including into soil and groundwater.

8 24. "Settling Defendant" shall mean J&S Chrome Plating Co.

9 25. "Site" shall mean the property located at 6863 East Florence Place, Bell
10 Gardens, California, 90201, in the County of Los Angeles, California. For
11 purposes of this Consent Decree, the Site includes the vertical and areal extent of
12 the hazardous substance contamination that is or has been present at, beneath,
13 and/or from the Site, including in the soil and/or groundwater.

14 **V. SETTLING DEFENDANT'S OBLIGATIONS**

15 26. Settling Defendant or its designee shall pay DTSC \$1,000,000 within
16 thirty (30) Days of the Effective Date.

17 27. Sale of the Property

18 a. Settling Defendant shall use commercially reasonable efforts to
19 sell the Property for Fair Market Value and to incur only
20 commercially reasonable costs of sale for the sale of the Property.
21 Within three (3) Days of entering or modifying any listing
22 agreement, Settling Defendant shall provide DTSC a copy of that
23 Agreement.

24 b. For purposes of this Consent Decree, Settling Defendant shall be
25 deemed to have made commercially reasonable efforts to sell the
26 Property if it does both of the following: 1) Enters into a listing
27 agreement with a licensed commercial real estate broker to list
28 the Property at Fair Market Value and 2) Accepts the highest

1 bona fide offer to purchase the Property in as-is condition, and
2 without representations or warranties, for Fair Market Value.

3 c. Any purchase agreement and escrow instructions for the sale of
4 the property shall require the escrow agent to pay DTSC the sum
5 of 1) all of the Net Sale Proceeds up to \$1,005,000 and 2) seventy
6 five percent of the amount of the Net Sale Proceeds exceeding
7 \$1,055,000.

8 d. Within five (5) Days of opening escrow to sell the Property,
9 Settling Defendant shall notify DTSC in writing and shall provide
10 DTSC with a copy of the agreement to sell the Property and
11 escrow agreement. As early as possible after opening escrow,
12 Settling Defendant shall request a preliminary Seller's Estimated
13 Settlement Statement from the escrow agent and provide that
14 statement to DTSC. Within fifteen (15) Days of its receipt of the
15 Estimated Settlement Statement, DTSC may object to the sale
16 price for the Property as being below Fair Market Value. Any
17 objection must be in writing, and must state with specificity the
18 basis of the objection. If such an objection is made, the parties
19 will promptly confer to determine if the objection can be
20 satisfactorily resolved. The Settling Defendant may not close the
21 sale unless DTSC has withdrawn its objection. A determination
22 by DTSC that the Property is being sold for less than Fair Market
23 Value shall not be subject to judicial review.

24 e. DTSC presently has a lien on the property, recorded at
25 20111560290 in the Los Angeles County Recorder's Office, a
26 copy of which is attached to this Consent Decree as Exhibit B.
27 Settling Defendant agrees not to contest the lien on the property.
28 Unless DTSC has objected to the sale in accordance with the

1 previous paragraph, on the day appointed for the close of escrow,
2 DTSC will execute and provide to the escrow agent a release of
3 the lien, which the escrow agent may record with the County
4 Recorder. If Settling Defendant does not sell the Property within
5 three years after the Effective Date, DTSC will be entitled to
6 exercise its rights on the lien, including but not limited to a right
7 to cause a foreclosure on the lien.

8 f. Within three (3) Days of escrow closing, the escrow agent shall
9 pay DTSC the funds specified in subparagraph (c) of this
10 Paragraph.

11 g. Within ten (10) Days of the close of escrow, Settling Defendant
12 shall provide both the Seller's Estimated Settlement Statement
13 and a signed report setting forth a cash based accounting of the
14 calculation of the Net Sale Proceeds, i.e., showing the gross sale
15 price, and each item deducted from same in calculating the Net
16 Sale Proceeds.

17 h. Following the close of escrow, within ten (10) Days of a written
18 request by DTSC, Settling Defendant shall provide all supporting
19 documentation for the sale and the calculation of the Net Sale
20 Proceeds, the purchase and escrow documents and the escrow
21 settlement statement, to enable DTSC to audit and verify the sale
22 transaction(s) and calculation of the Net Sale Proceeds. In the
23 event Settling Defendant sells the Property as part of a multi-
24 parcel sale, Settling Defendant shall also provide all
25 documentation regarding the allocation of the sales price and the
26 costs to the Property.

27

28

1 28. Settling Defendant will promptly record a land-use covenant to be
2 provided by DTSC that shall limit use of the Property to commercial or industrial
3 and protects the ongoing cleanup activities.

4 29. Settling Defendant's payment obligations shall be deemed to have been
5 satisfied in full upon: (1) Delivery of the payments due under Paragraphs 26 and
6 27. The payments specified in Paragraphs 26 and 27 shall be made by certified or
7 cashier's check made payable to Cashier, California Department of Toxic
8 Substances Control, and shall bear on its face both the docket number of this
9 proceeding and the phrase "Site Code 300255."

10 a. The payments shall be sent to:

11 Cashier
12 Accounting Office, MS-21A
13 Department of Toxic Substances Control
14 1001 I Street
15 P.O. Box 806
16 Sacramento, CA 95812-0806

17 b. A copy of the check shall be mailed to:

18 Leslie Fredrickson, Attorney
19 California Department of Toxic Substances Control
20 Office of Legal Counsel, MS-23A
21 1001 I Street
22 P.O. Box 806
23 Sacramento, CA 95812-0806

24 Or e-mailed to leslie.fredrickson@dtsc.ca.gov in .pdf or .jpg format.

25 30. This Consent Decree is conditioned upon full execution of the Settling
26 Defendant's obligations in Paragraphs 26 through 28. If these conditions are not
27 met, then this Consent Decree shall be voidable at the discretion of DTSC, and
28 DTSC may proceed to litigate the Complaint against Settling Defendant.

29 **VI. ACCESS TO INFORMATION**

30 31. Within thirty (30) Days of the Effective Date, Settling Defendant shall
31 have provided to DTSC copies of any and all records, documents, and information
32 within his possession or control, or that of its agents, relating to: (a) the ownership,

1 operation or control of the Site; (b) the purchase, storage, use, handling, generation,
2 treatment, transportation, or disposal of hazardous substances in connection with
3 the Site; (c) releases and/or threatened releases of hazardous substances at or from
4 the Site, including the soil and groundwater; and (d) removal, remedial or response
5 actions conducted by any person at the Site. If Settling Defendant believes it
6 produced all such documents in the course of this litigation, it may comply with this
7 Paragraph by sending DTSC a signed letter representing and warranting that it has
8 already produced all information subject to this Paragraph. The letter shall identify
9 each day of production. Sending such a letter shall not absolve Settling Defendant
10 of its obligations under Paragraph 32.

11 32. If after the Effective Date, Settling Defendant obtains or discovers any
12 records, documents or information described in Paragraph 31 not previously
13 provided to DTSC, Settling Defendant agrees to provide DTSC with copies of the
14 additional records, documents or information within ten (10) calendar days of the
15 date Settling Defendant discovers or obtains the records, documents or information.

16 **VII. COVENANT NOT TO SUE BY PLAINTIFFS**

17 33. Except as expressly provided in Section VIII (Plaintiffs' Reservation of
18 Rights) of this Consent Decree, Plaintiffs covenant not to sue Settling Defendant
19 pursuant to CERCLA or the HSAA to: (a) recover Plaintiffs' Response Costs
20 related to the Site, including response costs associated with groundwater
21 remediation relating to any hazardous substances released at the Site; or (b) require
22 Settling Defendant to conduct response actions, including removal or remedial
23 actions, related to the release and/or threatened release of hazardous substances at
24 or from the Site, including the soil and groundwater. This Covenant Not to Sue is
25 conditioned upon the complete and satisfactory performance by Settling Defendant
26 of all its obligations under this Consent Decree. This Covenant Not to Sue shall be
27 revoked and deemed not effective if Settling Defendant fails to fully perform on its
28 obligations stated in by Paragraphs 26 through 28 of this Consent Decree.

1 **VIII. PLAINTIFFS' RESERVATION OF RIGHTS**

2 34. Claims Regarding Other Matters. Plaintiffs reserve, and this Consent
3 Decree is without prejudice to, all rights against Settling Defendant with respect to
4 all matters not expressly included within Plaintiffs' Covenant Not to Sue (Section
5 VII).

6 35. Reservation of Claims. Plaintiffs reserves, and this Consent Decree is
7 without prejudice to, all rights against Settling Defendant with respect to the
8 following matters:

- 9 a. Failure of Settling Defendant to meet the requirements of this
10 Consent Decree;
- 11 b. Damage to natural resources, as defined in CERCLA section
12 101(6), 42 U.S.C. § 9601(6), including all costs incurred by any natural
13 resources trustees;
- 14 c. Liability resulting from Settling Defendant's introduction of
15 any hazardous substance, pollutant, or contaminant to the Site after the
16 Effective Date;
- 17 d. Liability resulting from overt acts by Settling Defendant after
18 the Effective Date that cause the exacerbation of the hazardous substance
19 conditions existing at or from the Site;
- 20 e. Claims based on liability arising from the past, present, or
21 future disposal of hazardous substances at sites or locations other than the
22 Site and
- 23 f. Claims based on criminal liability.

24 36. Government Authority. Except as expressly provided in the Consent
25 Decree, nothing in the Consent Decree is intended nor shall it be construed to
26 preclude DTSC from exercising its authority under any law, statute or regulation.
27 Furthermore, nothing in the Consent Decree is intended, nor shall it be construed, to

1 preclude any other state agency, department, board or entity or any federal entity
2 from exercising its authority under any law, statute or regulation.

3 37. Claims Against Other Persons. DTSC reserves, and this Consent Decree
4 is without prejudice to, all rights, claims, and causes of action DTSC may have
5 against any person other than Settling Defendant. Nothing in this Consent Decree
6 is intended to be nor shall it be construed as a release, covenant not to sue, or
7 compromise of any claim or cause of action, which DTSC may have against any
8 person or other entity not a signatory to this Consent Decree.

9 38. Unknown Conditions/New Information. Notwithstanding any other
10 provision in the Consent Decree, DTSC reserves, and this Consent Decree is
11 without prejudice to, the right to institute proceedings in this action or in a new
12 action, and/or to issue an administrative order seeking to compel Settling Defendant
13 to perform response activities at the Site and/or to pay DTSC for additional
14 Response Costs, if:

15 a. Either of the following occurs: (i) conditions at the Site,
16 previously unknown to DTSC, are discovered, or (ii) information
17 previously unknown to DTSC, is received, in whole or in part;
18 and
19 b. DTSC determines that the previously unknown conditions or
20 new information together with other relevant information indicate
21 that the response actions at the Site are not protective of human
22 health or the environment.

23 | IX. COVENANT NOT TO SUE BY SETTLING DEFENDANT

24 39. Settling Defendant covenant not to sue, and agree not to assert any claims
25 or causes of action against Plaintiffs or any DTSC contractors or employees that
26 arise out of the transaction or occurrence that is the subject matter of the Plaintiffs'
27 complaint, or for any injuries, losses, costs, or damages caused or incurred as a

1 result of the performance of the requirements of this Consent Decree or the DTSC's
2 response actions at the Site.

3 40. In any legal proceedings that Plaintiffs may initiate against Settling
4 Defendant for non-compliance with this Consent Decree in such proceedings,
5 Settling Defendant may raise any and all defenses that Settling Defendant deems to
6 be relevant to the issue of whether or not it has complied with the terms of the
7 Consent Decree.

8 **X. EFFECT OF SETTLEMENT AND CONTRIBUTION PROTECTION**

9 41. With regard to claims for contribution against Settling Defendant for
10 "Matters Addressed" in this Consent Decree, the Parties agree, and the Court finds
11 as follows:

12 a. This Consent Decree constitutes a judicially approved
13 settlement within the meaning of CERCLA section 113(f)(2), 42 U.S.C. §
14 9613(f)(2).

15 b. This Consent Decree requires that Settling Defendant pay
16 certain costs with respect to its liability at the Site.

17 c. Settling Defendant is entitled to the contribution protection
18 provided by CERCLA section 113(f)(2), 42 U.S.C. § 9613(f)(2), and by state
19 statutory and common law for the "Matters Addressed" in this Consent
20 Decree, except for actions and claims identified in Section VIII (Plaintiffs'
21 Reservation of Rights).

22 42. "Matters Addressed". The "Matters Addressed" in this Consent Decree
23 are all response actions taken or to be taken and all response costs incurred or to be
24 incurred, at or in connection with the Site, by Plaintiffs, or any other person.

25 43. The protection provided for in this Section X is conditioned upon
26 compliance by Settling Defendant with his obligations under Paragraphs 26 through
27 28 of this Consent Decree.

28

1 44. Nothing in this Consent Decree limits or impairs the right of Plaintiffs to
2 pursue any other person for unrecovered Response Costs incurred by Plaintiffs.

3 **XI. NOTIFICATION**

4 45. Notification to or communication among the Parties as required or
5 provided for in this Consent Decree shall be addressed as follows:

6 For Plaintiffs:

7 Hossein Nasari, Project Manager
8 Cypress Cleanup Program
9 California Department of Toxic Substances Control
10 Corporate Avenue
11 Cypress, CA 91311-6505

12 Leslie Fredrickson
13 California Department of Toxic Substances Control
14 Office of Legal Counsel, MS-23A
15 P.O. Box 806
16 Sacramento, CA 95812-0806

17 For Settling Defendant:

18 J&S Chrome,
19 c/o 6863 East Florence Place, LLC
20 Attention: David Isola
21 405 West Pine Street
22 Lodi, CA 95240

18 **XII. GENERAL PROVISIONS**

19 46. Parties Bound. This Consent Decree shall apply to, be binding upon, and
20 inure to the benefit of the Parties and their representatives, successors, heirs,
21 legatees, and assigns.

22 47. No Rights in Other Parties. Except as provided in Paragraph 46
23 regarding parties bound, nothing in this Consent Decree shall be construed to create
24 any rights in, or grant any cause of action to, any person not a party to this Consent
25 Decree.

26 48. No Waiver of Enforcement. The failure of DTSC to enforce any
27 provision of this Consent Decree shall in no way be deemed a waiver of such
28 provision or in any way affect the validity of this Consent Decree. The failure of

1 DTSC to enforce any such provision shall not preclude it from later enforcing the
2 same or any other provision of this Consent Decree.

3 49. Attorneys' Fees. Except as expressly provided in this Consent Decree,
4 the Parties will not seek to recover attorneys' fees and/or litigation costs against
5 each other.

6 50. Final Agreement. This Consent Decree constitutes the final, complete
7 and exclusive agreement and understanding between the Parties with respect to the
8 settlement embodied in this Consent Decree.

9 51. Modifications. This Consent Decree may be modified only upon written
10 approval of the Parties and with the consent of the Court.

11 52. Counterparts. This Consent Decree may be executed in two or more
12 counterparts, each of which shall be deemed an original, but all of which together
13 shall constitute one and the same instrument.

14 53. Agent. Settling Defendant has appointed and authorized the agents
15 identified in Paragraph 45 to this Consent Decree to receive notices with respect to
16 all matters arising under or relating to this Consent Decree.

17 **XIII. ENTRY OF THE CONSENT DECREE**

18 54. This Consent Decree shall be lodged with the Court for a period of not
19 less than thirty (30) calendar days. The Consent Decree also is subject to a public
20 comment period of not less than thirty (30) calendar days. DTSC may modify or
21 withdraw its consent to this Consent Decree if comments received during the public
22 comment period disclose facts or considerations that indicate that this Consent
23 Decree is inappropriate, improper or inadequate. Settling Defendant consents to the
24 entry of this Consent Decree without further notice.

25 55. If, for any reason, the Court declines to approve this Consent Decree in
26 the form presented, this agreement is voidable at the sole discretion of any Party
27 and the terms of the Consent Decree may not be used as evidence in any litigation
28 between the Parties.

1 56. Each signatory to this Consent Decree certifies that he or she is fully
2 authorized by the Party he or she represents to enter into the terms and conditions of
3 this Consent Decree, to execute it on behalf of the party represented, and to legally
4 bind that party to all the terms and conditions of this Consent Decree.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: NOV 24 2015, 2015

Honorable R. Gary Klausner
United States District Judge

Party Signatures on pages to follow

1 CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL AND
2 TOXIC SUBSTANCES CONTROL ACCOUNT

3 DATE: 8/26/15

4 By:

Dot Lofstrom
5 SIGNATURE

6 Dot Lofstrom
7 NAME (printed or typed)

8 Division Chief
9 TITLE (printed or typed)

10 J&S CHROME PLATING CO.

11 DATE: _____

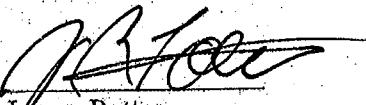
12 By:

13 SIGNATURE

14
15 NAME (printed or typed)

16 APPROVED AS TO FORM AND CONTENT:

17 Dated: 8/26/15

18 
James Potter
19 Deputy Attorney General
20 Attorney for Plaintiffs

21 Dated: _____

22
23
24
25
26
27
28
18 [PROPOSED] CONSENT DECREE BETWEEN PLAINTIFFS AND
J&S CHROME

1 CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL AND
2 TOXIC SUBSTANCES CONTROL ACCOUNT

3 DATE: _____

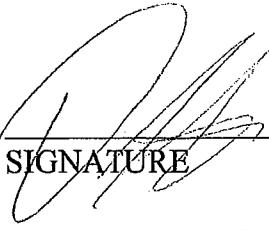
4 By: _____
5 SIGNATURE

6 NAME (printed or typed)

7 TITLE (printed or typed)

8 J&S CHROME PLATING CO.

9 DATE: August 26, 2015

10 By: 
11 SIGNATURE

12 DAVID R. ISOLA

13 NAME (printed or typed)

14 APPROVED AS TO FORM AND CONTENT:

15 Dated:

16 James Potter
17 Deputy Attorney General
18 Attorney for Plaintiffs

19 Dated: August 26, 2015

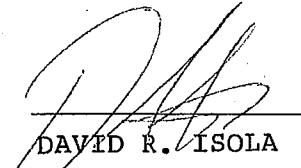
20 
21 DAVID R. ISOLA
22 ISOLA LAW GROUP, LLP
23 Attorneys for J&S Chrome
24 Plating Co.

Exhibit A

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
CENTRAL DISTRICT

CALIFORNIA DEPARTMENT OF
TOXIC SUBSTANCES CONTROL
and CALIFORNIA TOXIC
SUBSTANCES CONTROL
ACCOUNT,

Plaintiffs,

v.

J&S CHROME PLATING CO., a
California corporation, KENFIELD
DEV., LLC, a California limited
liability company; and JAMES
MANCUSO, an individual,

Defendants.

Case No.: 2:14-CV 02613-RGK (AJW)

[PROPOSED] ORDER PURSUANT
TO STIPULATION GRANTING IN
PART PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT ON THE LIABILITY
OF J&S CHROME PLATING AND
JAMES MANCUSO

Judge: The Honorable R.
Gary Klausner

Trial Date: August 25, 2015

Action Filed: April 7, 2014

Plaintiffs in this matter, the State of California Department of Toxic Substances Control and California Toxic Substances Control Account (together, "Plaintiffs") filed a complaint alleging *inter alia* that Defendants J&S Chrome Plating Company and James Mancuso (together "Defendants") are liable for Plaintiffs' response costs incurred at the J&S Chrome Plating Company Site (the "Motion") pursuant to section 107 of the Comprehensive Environmental Response,

1 Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9607(a).

2 On April 13, 2015, Plaintiffs filed a Motion for Partial Summary Judgment
3 on the liability of Defendants for response costs that Plaintiffs incurred at the Site.
4 Thereafter, Plaintiffs and Defendants (together “Parties”) stipulated to the granting
5 of the motion in part as stated herein.

6 In accordance with the Parties’ stipulation, the court finds that Defendants
7 J&S Chrome Plating Company and James Mancuso are liable under CERCLA
8 section 107, 42 U.S.C. § 9607(a), as follows:

9 UNDISPUTED FACTS

10 1. The property located at 6863 East Florence Place, Bell Gardens,
11 California, 90201 (“the Site”) is an area where hazardous substances, including
12 hexavalent chromium, cadmium, and zinc have been deposited, stored, disposed of,
13 or placed or otherwise come to be located in soil and groundwater.

14 2. The Site constitutes a “facility” within the meaning of 42 U.S.C. §
15 9601(9).

16 3. Plaintiffs have incurred costs in responding to the release or threatened
17 release of hazardous substances at the Site.

18 4. J&S Chrome Plating Company is the current owner of the Site.

19 5. From 1980 through 1999, James Mancuso was an owner of the Site.

20 6. Hazardous substances were disposed at the Site. The period of
21 disposal of hazardous substances included the period between 1981 through 1986.

22 7. J&S Chrome Plating Company and James Mancuso were each
23 operators of the Site at the time of disposal of hazardous substances at the Site.

24 CONCLUSIONS OF LAW

25 1. The Site constitutes a “facility” within the meaning of 42 U.S.C. §
26 9601(9).

27 2. The Site is a “facility” from which there has been a “release” or
28 “threatened release” of “hazardous substances” within the meaning of CERCLA

1 section 101, 42 U.S.C. § 9601.

2 3. Defendant J&S Chrome Plating Company is liable for all response
3 costs incurred by DTSC in responding to the release or threatened release of
4 hazardous substances at the Site.

5 4. Defendant James Mancuso is liable for all response costs incurred by
6 DTSC in responding to the release or threatened release of hazardous substances at
7 the Site.

8 5. The amount of Plaintiff's responses costs remain to be determined, either
9 by further motion or at trial of this matter. Defendants reserve the right to argue
10 that (1) they are not liable for response costs that they demonstrate are inconsistent
11 with the National Oil and Hazardous Substances Pollution Contingency Plan, 40
12 CFR §300 ("NCP"); (2) they are not liable for costs caused by releases of
13 hazardous substances from the former Chrome Crankshaft Company facility to the
14 extent they demonstrate that harms arising from releases of hazardous substances
15 from the Chrome Crankshaft Company property are divisible from harms arising
16 from releases of hazardous substances from 6863 East Florence Place; and (3) they
17 are not liable for response costs to the extent they demonstrate that recovery of such

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1 costs is barred by the applicable statute of limitations. Plaintiffs reserve the right to
2 contest Defendants' arguments.

3 IT IS SO ORDERED

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5 DATED: April 30, 2015

Jay Klausner

6 United States District Judge

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11 **ALTERNATIVE ORDER**

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13 The Court does not approve the foregoing order. Plaintiffs' Motion for Partial
14 Summary Judgment will be set for hearing on June 1, 2015. In that instance,
15 Defendants' opposition briefs will be due on May 11 and Plaintiffs' reply brief will
16 be due on May 18.

17

18 IT IS SO ORDERED

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20 DATED: _____

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22 _____
23 United States District Judge

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Exhibit B

11/17/2011



20111560290

**RECORDING REQUESTED BY
California Department of Toxic
Substances Control**

**J&S Chrome Plating Company
6863 Florence PL.
Bell Gardens, California 90201**

WHEN RECORDED MAIL

TO

**Manny Alonso
Brownfields and Environmental
Restoration Program
Department of Toxic Substances
Control
5796 Corporate Avenue
Cypress, California 90630**

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

LIEN

The State of California Department of Toxic Substances Control, hereby records this lien in the amount of \$5,257,334.05, on the real property in the County of Los Angeles, State of California, located at 6863 Florence Pl., Bell Gardens, Los Angeles, and identified as Assessor Parcel Number 635019006, by the Los Angeles County Tax Assessor, and is further identified by Los Angeles County Map Book 5604, Page 248, Tract, No. 11763.. This property is the site of a hazardous substance release. A legal description of the property is as follows:

That portion of the Rancho San Antonio, described as follows:

Beginning at the intersection of the southeasterly line of the 18 10 acre parcel of land shown on the map recorded in Book 5604, Page 248 of Deeds, records of said County with the southwesterly line of Suva Street as described in the deed to said County of Los Angeles recorded on May 23, 1947, as Instrument No 2609 in Book 24574, Page 308, Official Records of said County, thence along the prolongation of the northeasterly line of lot 1 in block 7 of Tract No. 11763, as per map recorded in Book 221, Pages 48 to 50 of Maps, in the office of the County Recorder of said County, south 61° 10' 45" east a distance of 100 feet to the true point of beginning, thence from said true point of beginning, south 32°

37' 53" west 731 25 feet to a point in the easterly prolongation of the southerly line of said land shown on the map recorded in Book 5604, page 248 of Deeds that is distant south 82° 41' 45" east 375 feet along said prolongation from the southeasterly line of said 18 10 acre parcel of land, thence along said prolongation south 82° 41' 45" east 137 58 feet to a line that is parallel with the line above described as south 32° 37' 53" west 731 25 feet which parallel line passes through a point in prolongation of the northeasterly line of said lot 1 in block 7 that is distant southeasterly 125 feet from the true point of beginning, thence along said parallel line north 32° 37' 53" east 680 53 feet to said prolonged line of lot 1 in block 7, thence along said prolonged line north 61° 10' 45" west 125 feet to the true point of beginning

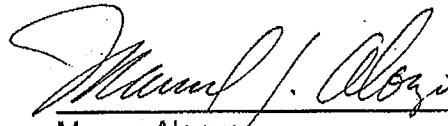
Owner of Record as shown on the latest equalized assessment roll: J&S Chrome Plating Company.

This lien is recorded pursuant to, and its enforceability is governed by, section 25365.6 of the California Health and Safety Code.

The amount secured by this lien, pursuant to section 25365.6, is equal to the costs or damages incurred and payable from the California Hazardous Substances Account, Hazardous Waste Control Account and the Hazardous Substance Cleanup Fund by the Department of Toxic Substances Control and its predecessor agency, the Department of Health Services, with respect to the property described herein. The lien continues until the liability for these costs or damages is satisfied.

The lien has the force, effect, and priority of a judgment lien.

Date: 11/14/11



Manny Alonzo
Unit Chief
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

This is a true and certified copy of the record
if it bears the seal, imprinted in purple ink,
of the Registrar-Recorder/County Clerk

NOV 17 2011

Dean C Logan REGISTRAR-RECORDER/COUNTY CLERK
LOS ANGELES COUNTY, CALIFORNIA

